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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIK MONSEN, IAN A. SIVEYER, MARC MORELLI, YAKUP
J. IGVAL, RONALD P. SANSONE, and JOHN C. HARMON

Appeal 2009-0877
Application 10/674,135
Technology Center 3600

Decided:¹ February 13, 2009

Before HUBERT C. LORIN, DAVID B. WALKER, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Erik Monsen, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-3 and 6-12. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

The invention is a method of metering international mail so that terminal dues will be paid. (Specification [019].) A postage meter prints an indicia for a first country, such as the United States, including a unique number and an indicia for a second country, such as the Royal Mail, including an unique number on a mail piece. (Specification [021].) All information is transferred via a data center to a database of a mail records controller, where a record referenced to the unique number is created. (Specification [019].) The indicia are legitimate if the indicia information, including the unique number, is matched with a record in the database and has not been reported as canceled. (Specification [022].) After the mail piece is processed, the indicia is cancelled by a visible ink mark. *Id.*

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

² Our decision will make reference to the Appellants' Appeal Brief ("Br.," filed Feb. 15, 2008) and the Examiner's Answer ("Answer," mailed Apr. 17, 2008).

1. A method for paying for mail to be delivered from a sender in a first country to a recipient in a second country, comprising the steps of:
 - affixing a first indicia containing a unique number to mail for payment of carrier fees for the first country post office;
 - affixing a second country indicia containing a number to the mail for payment of the carrier fees for a second country post office, and
 - debiting a meter for the payment of the carrier fees for the first country post office and the carrier fees for the second country post office.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Pintsov	US 6,125,357	Sep. 26, 2000
Schwartz	US 2002/0073040 A1	Jun. 13, 2002
Sansone	US 6,415,336 B1	Jul. 2, 2002

The following rejections are before us for review:

1. Claims 1-3, 6-7, and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schwartz.
2. Claims 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schwartz in view of Pintsov.
3. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schwartz in view of Pintsov and Sansone.

ISSUES

The first issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 1, 6-7, and 12 under 35 U.S.C. § 103(a)

as being unpatentable over Schwartz. The issue turns on whether one of ordinary skill in the art would be led by Schwartz to providing a second country indicia.

The second issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Schwartz. The issue turns on whether one of ordinary skill in the art would be led to modify Schwartz to provide a second country indicia that is a post office postal indicia.

The third issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Schwartz and Pintsov. The issue turns on whether one of ordinary skill in the art would be led by Schwartz and Pintsov to the step of comparing the information stored in the database with the information examined to determine whether the first indicia and the second indicia affixed to examined mail are legitimate.

The fourth issue before us is whether the Appellants have shown that the Examiner erred in rejecting claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Schwartz and Pintsov. The issue turns on whether one of ordinary skill in the art would be led by Schwartz and Pintsov to the step of utilizing the unique number contained in the first indicia and the number contained in the second indicia to determine whether the first indicia and the second indicia affixed the examined mail are legitimate.

The fifth issue before us is whether the Appellants have shown that the Examiner erred in rejecting claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Schwartz and Pintsov and Sansone. The issue turns on

whether one of ordinary skill in the art would be led by the combination of the references to cancel a first indicia and a second indicia.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 recites “affixing a first indicia containing a unique number to mail for payment of carrier fees for the first country post office.”
2. Claim 1 also recites “affixing a second country indicia containing a number to the mail for payment of the carrier fees for a second country post office.”
3. Claim 2 recites “wherein the first indicia is a post office postal indicia.”
4. Claim 3 recites “wherein the second indicia is a post office postal indicia.”
5. Claim 8 recites “comparing the information stored in the database with the information examined to determine whether the first indicia, and the second indicia affixed to examined mail are legitimate.”
6. Claim 9 recites “utilizing the unique number contained in the first indicia and the number contained in the second indicia to determine whether the first indicia and the second indicia affixed to the examined mail are legitimate.”

7. Claim 11 recites “marking the first indicia and the second indicia with a visible ink to distinguish a used first and second indicia form an unused first and second indicia.”
8. The Specification does not provide an express definition for “indicia.”
9. The ordinary and customary meaning of “indicia” is “1: distinctive marks: INDICATIONS 2: postal markings often imprinted on mail or on label to be affixed to mail.” (*See Merriam-Webster’s Collegiate Dictionary* 529 (10th Ed. 1993,) (Entry for “indicia”; n.)
The scope and content of the prior art
Schwartz
10. Schwartz describes a postage payment system and method.
(Schwartz [0001].)
11. Schwartz describes applying a label and bar.

12. Figure 7 of Schwartz is reproduced below.

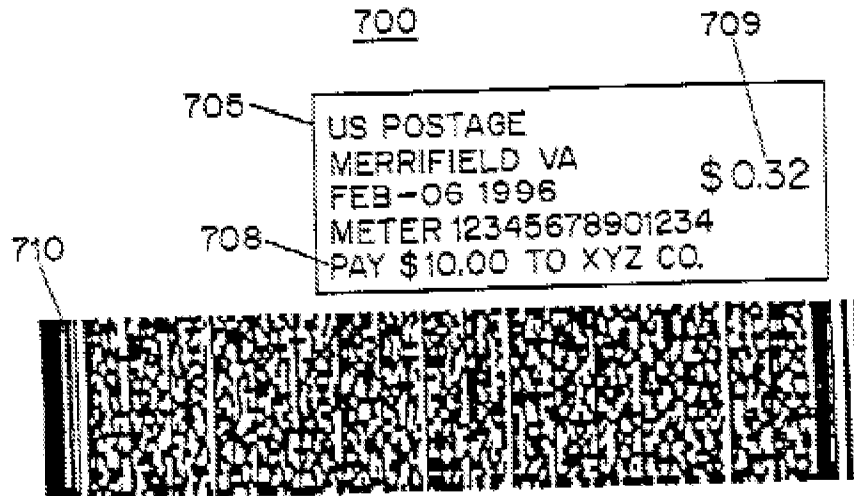


FIG. 7

Figure 7 depicts a postage indicium indicating a postage amount 709 and a payment amount with payee 708.

13. Schwartz describes postage indicium 700 having a human readable portion 705 and a bar-code portion 710. (Schwartz [0059].)
14. Schwartz describes the bar-code portion 710 including transactional data, including payer and payee account data, transaction amounts, transaction sequence number and special instructions. (See Schwartz [0061] – [0069].)
15. Schwartz describes the bar-code portion 710 as including the transaction amount and payee, which is also included on the human readable portion 705. (Schwartz [0061]-[0063].)
16. Schwartz states, “[i]n that instance, when the postal authority inspects the indicium, recognizing that at least part of the indicium

represents a money order, the postal authority acts as a payer bank and pays the transaction amount to the specified payee according to the payment instructions.” (Schwartz [0010].)

17. Schwartz states, “[i]n particular, by specifying the payee of the money order represented by the indicium to be a courier (e.g., FedEx[®]) different from the postal authority, and the transaction amount to be the cost of the courier service, we have invented a universal postage indicium for paying any courier service.” (Schwartz [0011].)
18. Schwartz states, “[f]urther, the encrypted information on the mail pieces may also be used to convey data other than monetary data, e.g., partial payment, redirection of payment, and order information.” (Schwartz [0082].)
19. Schwartz describes postage indicium 700 being affixed to a mail piece. (Schwartz [0097].)
20. Schwartz describes verifying the transactional data in bar-code portion 710 with a central computer, including to see whether the indicium has been canceled. (Schwartz [0070].)

Pintsov

21. Pintsov is a method of encrypting unique addressee information into the indicium of mail pieces and verifying the indicium.
22. Pintsov describes providing mail pieces with an indicium having a local digital tokens 32, 34, and 36, which can be Message Authentication Codes. (Col. 5, ll. 57 – 66.).
23. Pintsov describes also providing a mail piece with an identification number. (Col. 5, ll. 50-52.)

24. Pintsov describes comparing local digital tokens to indicium local digital tokens for a match and mail piece identification and device identification numbers to identification numbers in a database. (Col. 8, ll. 33-39.)
25. Pintsov describes mail pieces having non-matching tokens and identification numbers being investigated for mail fraud and mail pieces having matching tokens and identification numbers being delivered. (Col. 8, ll. 39-43.)

Sansone

26. Sansone's invention is a method of providing electronic indicium affixed to a mail piece that stores relevant postal information and visible markings recognizable by human operators and postal processing machines. (Col. 1, ll. 63-67.)
27. Sansone describes a cancellation mark 146 that renders a indicium nonusable. (Col. 7, ll. 22-24.)

Any differences between the claimed subject matter and the prior art

28. Schwartz does not disclose a second country post office.
29. Schwartz does not disclose a first indicia containing a unique number.

The level of skill in the art

30. Neither the Examiner nor the Appellants has addressed the level of ordinary skill in the pertinent art of mailing metering systems. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to

reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

31. The Examiner states that it would have been obvious to one having ordinary skill in the art to have modified the first indicia of Schwartz to have included a unique number, for the advantage of identifying a particular mail item. (Answer 4.)
32. The Examiner states that it would have been obvious to have included a second country post office as disclosed by Schwartz because the post office is one carrier that a customer can select out of many in the competitive mail shipping industry. (Answer 4.)
33. The Examiner notes that FedEx® is an international carrier that delivers mail to a second country. (Answer 9.)
34. The Examiner states that the phrase “any other courier” as recited by Schwartz includes a second country postal carrier. (Answer 9.)

Secondary considerations

35. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one

of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the

[*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1, 6, 7, and 12 under § 103(a) as being unpatentable over Schwartz.

The Appellants argued claims 1, 6, 7, and 12 as a group (Br. 10). We select claim 1 as the representative claim for this group, and the remaining claims 6, 7, and 12 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

In rejecting claim 1, the Examiner contends that human readable portion 705 in Schwartz is a first indicia for a first country post office (i.e., US). (Answer 3.) The Examiner also contends that bar-code portion 710, which includes the same information as portion 708 (Answer 9), is a second country indicia. (Answer 3.) The Examiner reasons that because Schwartz describes that the payee could be FedEx® or any other carrier, then one of ordinary skill in the art would have found it obvious to choose another country post office as the second carrier. (Answer 9.) The Examiner states

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Schwartz to have included a second country post office as disclosed by Schwartz because the post office is one carrier that a customer can select out of many in the competitive mail shipping industry. (Answer 4.)

The Appellants argue that the Examiner erred in rejecting claim 1 as unpatentable in view of Schwartz because 1) bar-code 710 is a portion of U.S. postage indicium 700 and not be considered a separate second country indicia (Answer 11-13) or 2) one of ordinary skill in the art would not be led to make the payee of Schwartz a second country post office because the first post office selects the other carrier and not the customer, as stated by the Examiner. (Answer 13).

First, we construe claim 1.

Analysis begins with a key legal question -- *what* is the invention *claimed*? Courts are required to view the claimed invention *as a whole*. 35 U.S.C. § 103. Claim interpretation, in light of the specification, claim language, other claims, and prosecution history, is a matter of law and will normally control the remainder of the decisional process.

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987). Claim 1 requires “affixing a first indicia containing a unique number to the mail for payment of carrier fees for the first country post office” (FF 1) and “affixing a second country indicia containing a number to the mail for payment of the carrier fees for a second country post office” (FF 2). The Specification does not contain an express definition of “indicia.” (FF 8.) The ordinary and customary meaning of indicia is “distinctive marks.” (FF 9.) Claim 1 does not recite any limitations requiring the first indicia or the second indicia to include both a human readable portion and a bar-code portion. Claim 1 does not require the first country post office or the second country post office to be the standard indicia of the United States Postal

Service. Therefore, we find that claim 1 requires affixing first distinctive marks containing a unique number to mail for payment of carrier fees for the country post office and affixing a second country distinctive marks containing a number to the mail for payment of the carrier fees for a second country post office.

Turning to Appellants' first argument, we find that claim 1 does not preclude construing the human readable portion 705 of Schwartz as the first indicia and the bar-code portion 710 as the second country indicia. Human readable portion 705 includes "US POSTAGE" and "\$0.32," (FF 12-13), which are distinctive marks for payment of carrier fees for the first country post office. We agree with the Examiner that one of ordinary skill in the art would have also included a unique number in human readable portion 705. (FF 31.) Bar-code portion 710 also includes distinctive marks for the payment of carrier fees for a payee (i.e., courier). (FF 12 and 14.) The bar-code includes information, such as a transaction sequence number, payee information, and transaction amount. (FF 14.) We agree with the Examiner that one of ordinary skill would be led by Schwartz to make the payee a second country post office and therefore make the bar-code a second country indicia. (FF 32.) Therefore, we find that Schwartz would lead one of ordinary skill in the art to affix both a first indicia and a second country indicia as claimed to mail.

Turning to Appellants' second argument, we find that one of ordinary skill in the art would be led by Schwartz to making the payee a second country postal authority. Schwartz describes using the indicium as the money order and having a postal authority pay a payee according to payment instructions. (FF 16.) Schwartz then describes making the payee of the

money order a courier, such as FedEx®, as a payee (FF 17) and states, “we have invented a universal postage indicium for paying any courier service.” (Schwartz [0011].) Unlike the Appellants’ argument, Schwartz does not describe a post office selecting the other courier nor does claim 1 require the first post office to select the second post office. Therefore, we find that Schwartz would lead one of ordinary skill in the art to making the payee a second country postal authority as claimed.

Therefore, we hold that the Appellants have not shown that the Examiner erred in rejecting claims 1, 6, 7, and 12 as unpatentable under 35 U.S.C. § 103(a).

The rejection of claims 2 and 3 under § 103(a) as being unpatentable over Schwartz.

Claim 2 requires the first indicia to be a postal office postal indicia (FF 3), and claim 3 requires the second indicia to be a post office postal indicia (FF 4). Both claims 2 and 3 depend upon claim 1. Claim 3 does not depend upon claim 2.

The Appellants again argue that Schwartz only discloses a postal indicia for one country and that one of ordinary skill in the art would not be led to make the payee a second country indicia because the first post office selects the other carrier and not the customer, as stated by the Examiner in pages 4 and 5 of the Final Rejection (Answer 15).

The Examiner contends that human readable portion 705 of Schwartz is a first indicia that is a post office postal indicia. (Answer 4.) The Examiner further contends that one of ordinary skill in the art would have been led by Schwartz to have made the second indicia 710 a post office

postal indicia because the post office is one carrier that a customer can select out of many in the competitive mail shipping industry. (Answer 5.)

As discussed above with regards to claim 1, we find that Schwartz would have led one of ordinary skill in the art to make the second indicia a post office postal indicia.

Therefore, we hold that the Examiner did not err in rejecting claims 2 and 3 as unpatentable under 35 U.S.C. § 103(a).

The rejection of claims 8 and 10 under § 103(a) as being unpatentable over Schwartz and Pintsov.

The Appellants argued claims 8 and 10 as a group (Br. 16). We select claim 8 as the representative claim for this group, and the remaining claim 10 stands or falls with claim 8. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellants argue that the Examiner erred in rejecting claim 8 because

Schwartz and/or Pintsov taken separately or together do not disclose or anticipate examining the first indicia information and the second indicia information; and comparing the information stored in the database with the information examined to determine whether the first indicia, and the second indicia affixed to examined mail are legitimate as claimed in claim 8.

(Br. 18.) The Examiner contends that the combination of Schwartz and Pintsov would lead one of ordinary skill in the art to the step recited in claim 8. (Answer 11.) The Examiner contends that Schwartz describes verifying the information in bar-code 710, but does not describe 1) verifying the information in human readable indicia 705 and 2) storing indicia in a

database and comparing the information with information examined to determine whether the indicia affixed to the examined mail are legitimate. (Answer 6.) The Examiner states “it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Schwartz to have included verifying human readable indicia 705 for the advantage of ensuring that postal data is correct prior to mailing a mail piece.” *Id.* Further, the Examiner contends that Pintsov describes storing indicia information in a database and using it to compare examined information with stored information in order to identify fraud. (Answer 7.)

Claim 8 states “examining the first indicia information and the second indicia information” and “comparing the information stored in the database with the information examined to determine whether the first indicia, and the second indicia affixed to examined mail are legitimate.” (FF 5.)

We find that the combination of Schwartz and Pintsov would lead one of ordinary skill in the art to the steps of claim 8. “Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007). “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* See also *Allvoice Computing PLC. v. Nuance Communications, Inc.*, 504 F.3d 1236, 1242 (Fed. Cir. 2007). Schwartz discloses a mail piece with two indicia as discussed above in regards to claim 1. The Examiner found that one of ordinary skill in the art would be led to include a unique number in the first indicia (FF 31) and that the second indicia contained a number. Pintsov describes providing an indicium on a mail piece with an identification

number and tokens (FF 22-23) and comparing the identification number and token on the mail piece to identification numbers and tokens in a database in order to detect fraud. (FF 24-25.) We find that one of ordinary skill in the art would have been lead by Pintsov to verify the first and second indicia numbers of Schwartz against information stored in a database to prevent fraud.

Therefore, we hold that the Examiner did not err in rejecting claims 8 and 10 as unpatentable under 35 U.S.C. § 103(a).

The rejection of claim 9 under § 103(a) as being unpatentable over Schwartz and Pintsov.

The Appellants argue that Schwartz and Pintsov do not describe utilizing the unique number of the first and second indicia to determine whether the first indicia and the second indicia affixed to the examined mail are legitimate. (Answer 19.)

The Examiner contends that Pintsov teaches a known technique of comparing mail piece identification numbers to identification numbers stored in a database in order to verify and check a mail piece for suspected fraud. (Answer 13.) The Examiner states that applying the mail piece comparison and verification steps of Pintsov to Schwartz would have been recognized by those of ordinary skill in the art as resulting in an improved system that would allow for preventing indicia misuse and postal fraud. (Answer 14.)

Claim 9 depends from claim 8 and further requires that the unique number contained in the first indicia and the number contained in the second indicia are utilized in determining whether the first and second indicia are

legitimate. (FF 6.) As discussed above with regards to claim 8, we find that the combination of Schwartz and Pintsov would lead one of ordinary skill in the art to use the numbers from the first and second indicia to determine whether the first and second indicia are legitimate. Pintsov describes using identification numbers to verify an indicia in a database. (FF 24-25.)

Therefore, we hold that the Examiner did not err in rejecting claim 9 as unpatentable under 35 U.S.C. § 103(a).

The rejection of claim 11 under § 103(a) as being unpatentable over Schwartz, Pintsov, and Sansone

The Appellants argue that the Examiner erred in rejecting claim 11 since Sansone only discloses canceling one indicium instead of two. (Answer 20.) The Examiner contends that Schwartz teaches first and second indicia and Sansone teaches a known technique of providing a cancellation mark on a mail piece indicium. (Answer 14.)

Claim 11 requires a step of marking both the first indicia and the second indicia with visible ink. (FF 6.)

We find that the combination of Schwartz, Pintsov, and Sansone would lead one of ordinary skill in the art to the step of cancelling both the claimed first indicia and the claimed second indicia. Schwartz describes a mail piece with two indicia on a mail piece (FF 12) and describes checking an indicia for cancellation (FF 20). Given this, one of ordinary skill in the art would be led to check any or all indicia for cancellation. Sansone describes cancelling an indicia by marking it with visible ink. (FF 26.) We find that one of ordinary skill in the art would be led by Sansone to cancel

both indicia on the mail piece of Schwartz with visible ink to indicate whether each indicia are canceled.

Therefore, we hold that the Examiner did not err in rejecting claim 11 as unpatentable under 35 U.S.C. § 103(a).

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting:

claims 1-3, 6-7 and 12 under 35 U.S.C. § 103(a) as unpatentable over Schwartz.;

claims 8-10 under 35 U.S.C. § 103(a) as unpatentable over Schwartz in view of Pintsov; and

claim 11 under 35 U.S.C. § 103(a) as unpatentable over Schwartz in view of Pintsov and Sansone.

DECISION

The decision of the Examiner to reject claims 1-3 and 6-12 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

Appeal 2009-0877
Application 10/674,135

hh

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